

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

CALVIN E. SUGGS, JR.,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-373

[July 16, 2014]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Okeechobee County; Sherwood Bauer, Jr., Judge; L.T. Case Nos. 472004CF000367A and 472004CF000368A.

Calvin E. Suggs, Jr., Daytona, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cynthia L. Comras, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We reverse the order that dismissed with prejudice Appellant's December 13, 2013 rule 3.850 motion. The court erred in finding the motion successive to a motion that Appellant filed under rule 3.800(a). The rule 3.800(a) motion did not seek relief under rule 3.850 and nothing in that motion indicates Appellant was attempting to amend the original rule 3.850 motion. *See Oquendo v. State*, 2 So. 3d 1001, 1006 (Fla. 4th DCA 2008) ("As long as a postconviction movant has been afforded at least one opportunity to amend an insufficient claim, the trial court has discretion as to whether to permit any further amendment.").

The trial court shall address the claims raised in this motion and, if appropriate, should consider appointing counsel to represent appellant in the postconviction proceedings. *See Russo v. Akers*, 724 So. 2d 1151, 1152-53 (Fla. 1998); *Graham v. State*, 372 So. 2d 1363, 1365-66 (Fla. 1979).

Reversed and Remanded.

DAMOORGIAN, C.J., LEVINE and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.